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Third Circuit

[Bamaca-Cifuentes v. Att'y Gen. of U.S.](#), No. 16-3104, 2017 WL 3710755 (3d Cir. Aug. 29, 2017) (MTR) The Third Circuit denied the PFR in part, concluding that “8 C.F.R. § 1003.2’s time bar [also] applies to motions to reopen removal proceedings seeking withholding of removal under the CAT,” agreeing with every circuit to have considered the question. See fn. 15.

Fifth Circuit

[Calvillo Garcia v. Sessions](#), No. 16-60015, 2017 WL 3766123 (5th Cir. Aug. 31, 2017) (AggFel-COV; Term of Confinement) The Fifth Circuit denied the PFR of the Board’s precedential decision Matter of Calvillo Garcia, 26 I&N Dec. 697 (BIA 2015), agreeing with the Board’s finding that a sentence of up to one year confinement in a substance-abuse felony punishment facility as a condition of probation constituted a “term of imprisonment” under section 101(a)(48)(B) of the Act.

Sixth Circuit

[United States v. Fallins](#), No. 16-6136, 2017 WL 3822880 (6th Cir. Sept. 1, 2017) (unpublished) (COV) The Sixth Circuit vacated petitioner’s sentence and remanded for resentencing, concluding that petitioner’s conviction under Tenn. Code Ann. §§ 39-12-101 and 39-14-302(a)(1) (attempted aggravated arson) did not qualify as a violent felony under the elements clause of the ACCA, 18 U.S.C. § 924(e)(2)(B)(i) (same as 18 U.S.C. § 16(a)).

Ninth Circuit

[Mejia v. Sessions](#), No. 15-70155, 2017 WL 3707916 (9th Cir. Aug. 29, 2017) (Mental Competency-Procedural Safeguards) The Ninth Circuit granted the PFR, concluding that the “IJ erred by failing to determine whether procedural safeguards were required after [Mejia] showed signs of mental incompetency.” See Matter of M-A-M-, 25 I&N Dec. 474 (BIA 2011).

[United States v. Ocampo-Estrada](#), No. 15-50471, 2017 WL 3707900 (9th Cir. Aug. 29, 2017) (BOP) The Ninth Circuit remanded petitioner’s case for resentencing, concluding that Cal. Health & Safety Code § 11378 (possession of certain controlled substances for sale) is an overbroad, divisible statute, but, after applying the modified categorical approach, concluded that since the record of conviction was silent as to which controlled substance element petitioner pleaded guilty to, the Government failed to meet its burden of proof to demonstrate that his prior conviction qualified as a “felony drug offense.”

[Sanchez v. Sessions](#), No. 14-71768, 2017 WL 3723238 (9th Cir. Aug. 30, 2017) (Mot. to Suppress) The Ninth Circuit granted the PFR, remanding with instructions to terminate removal proceedings, concluding that the Board erred in not granting petitioner’s motion to suppress Form I-213 because petitioner established a *prima facie* case that U.S. Coast Guard officials obtained the information contained in the I-213 in violation of the Fourth Amendment and the Government could not meet its burden to defend the constitutionality of the Coast Guard officers’ actions. See Matter of Barcenas, 19 I&N Dec. 609, 611 (BIA 1988).

[Chung Hou Hsiao v. Hazuda](#), No. 15-55676, 2017 WL 3816028 (9th Cir. Sept. 1, 2017) (AOS-245(i)) The Ninth Circuit affirmed the district court’s grant of summary judgment to the USCIS, concluding that, in determining whether an alien’s prior visa petition was “meritorious in fact” for purposes of adjusting status under section 245(i) of the Act, “it is generally permissible to treat a denial of the petition as dispositive if the denial was made on the merits and if the denial

was not the result of circumstances that changed after the petition was filed."